

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**BRENDA GARRETT REED**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO. 3:22-CV-00641-HTW-LGI**

**ROBERT REX MCRANEY, JR. AND  
MCRANEY AND MCRANEY, PLLC**

**DEFENDANTS**

**IN RE:**

**CHAPTER 13 CASE**

**BRENDA GARRETT REED**

**CAUSE NO. 20-01902-JAW**

**MOTION TO DISMISS McRANEY AND McRANEY, PLLC FROM ADVERSARY  
PROCEEDING DUE TO FAILURE TO STATE A CLAIM**

COMES NOW, McRaney and McRaney, PLLC, by and through its attorneys and files this its Motion to Dismiss to the Adversary Proceeding filed by Brenda Garrett Reed as follows:

1. On July 8, 2020, Plaintiff Brenda Garrett Reed filed a Voluntary Petition for Chapter 13 Bankruptcy in the United States Bankruptcy Court for the Southern District of Mississippi..
2. On September 30, 2022, Plaintiff Brenda Garrett Reed filed a Complaint against Robert Rex McRaney, Jr. and McRaney and McRaney, PLLC in the County Court of Hinds County Mississippi, Cause No. 22-2907.
3. On November 2, 2022, Defendants Robert Rex McRaney, Jr. and McRaney and McRaney, PLLC, filed their Notice of Removal to the United States Bankruptcy Court for the Southern District of Mississippi, Northern Division. At this time the case has been removed to the United States District Court for the Southern District of Mississippi, Northern Division.

**Facts**

4. Michael Reed, husband of Plaintiff Brenda Reed, filed a Chapter 13 bankruptcy in November 7, 2019. See Cause No. 19-03995, Dkt No. 1 in the United States Bankruptcy Court for the Southern District of Mississippi.

5. Included in this bankruptcy was the delinquent mortgage for 1828 Heather Drive, Vicksburg, Mississippi. Robert Rex McRaney, Jr. was the attorney of record for that case. See Cause No. 19-03995, Dkt No. 15 in the United States Bankruptcy Court for the Southern District of Mississippi.

6. On March 2, 2020, this bankruptcy was dismissed. The Order of Dismissal is attached as Exhibit D and incorporated herein by reference. See Cause No. 19-03995, Dkt No. 34 in the United States Bankruptcy Court for the Southern District of Mississippi.

7. On June 23, 2022, Robert Rex McRaney, Jr. filed a second Chapter 13 bankruptcy for Michael Reed. See Cause No. 20-01791, Dkt No. 1 in the United States Bankruptcy Court for the Southern District of Mississippi.

8. Also included in this bankruptcy was the delinquent mortgage for 1828 Heather Drive, Vicksburg, Mississippi. See Cause No. 20-01971, Dkt No. 12 in the United States Bankruptcy Court for the Southern District of Mississippi.

9. Plaintiff filed her Chapter 13 Bankruptcy less than a month after her husband's second chapter 13 filing on July 8, 2020. Payments for the home located at 1828 Heather Drive, Vicksburg, Mississippi were not included in this plan payment as they were to be paid through Mr. Reed's Chapter 13 bankruptcy. See Cause No. 20-01902, Dkt No. 2 in the United States Bankruptcy Court for the Southern District of Mississippi.

10. Plaintiff's bankruptcy was proposed to pay for a 2015 Chevrolet Equinox.

11. On December 18, 2020, Mr. Reed's second bankruptcy was dismissed for failure to make plan payments. See Cause No. 20-01791, Dkt No. 54 in the United States Bankruptcy Court for the Southern District of Mississippi.

12. On October 22, 2021, Tower Loan filed a Motion for Relief in the Plaintiff's bankruptcy stating that Mr. Reed's bankruptcy was dismissed, and the mortgage payments are not being made directly to Tower Loan.

**Negligence (Legal Malpractice): Motion to Dismiss for Failure to State a Claim**

13. Plaintiff in her Complaint alleges that McRaney and McRaney, PLLC, did not use reasonable care, skill and diligence in representing the Plaintiff in her Chapter 13 bankruptcy and this was the proximate cause of her losing her home.

14. To allege a successful claim for negligence or legal malpractice, the Plaintiff must prove the following elements: "the existence of an attorney-client relationship, the acts constituting negligence, that the negligence proximately caused the injury, and the fact and extent of the injury." *Lane v. Oustalet*, 873 So.2d 92, 98-99 (Miss. 2004).

15. The proximate cause of the Plaintiff and Michael Reed losing their home was the simple fact that the mortgage has not been paid since prior to Mr. Reed's first bankruptcy in November 2019.

16. Regardless of any actions taken or not taken by McRaney and McRaney, PLLC, in the Plaintiff's Chapter 13 bankruptcy, which was the third bankruptcy filed in 12 months for this couple, the onus was on the Plaintiff and/or her husband to make payments to Tower Loan as required by their mortgage document.

17. As the actual cause of the foreclosure on 1828 Heather Drive, Vicksburg, Mississippi, was due to the mortgage not being paid the cause of action for Negligence or Legal Malpractice against McRaney and McRaney, PLLC fails.

**Breach of Contract: Motion to Dismiss for Failure to State a Claim**

18. Plaintiff, in her Complaint, states that “[t]he Plaintiff entered into a written agreement with the Defendants to represent her in bankruptcy court proceedings. The aforesaid actions of the Defendants constitute breach of contract.”

19. To maintain a civil action against a party for any agreement which is not to be performed within the space of fifteen months from the making thereof, there must be a written contract. See Miss. Code Ann. § 15-3-1(d).

20. Representation for Brenda Reed in her Chapter 13 bankruptcy will exceed 15 months as by definition a Chapter 13 Bankruptcy cannot be less than 36 months in length. See 11 U.S.C. § 1322.

21. There is no written contract executed between Robert Rex McRaney, Jr. or McRaney and McRaney, PLLC for representation of Brenda Reed in her Chapter 13 bankruptcy.

22. As this representation in a Chapter 13 bankruptcy cannot be accomplished in less than 15 months, the Statute of Frauds requires this contract to be in writing.

23. If there is no contract, Count Two: Breach of Contract against McRaney and McRaney, PLLC is baseless and without merit.

**Breach of Fiduciary Duty: Motion to Dismiss for Failure to State a Claim**

24. Plaintiff broadly and vaguely alleges in her Complaint that McRaney and McRaney, PLLC actions constitute a breach of fiduciary duty.

25. The Mississippi Supreme court has ruled that allegations of breach of fiduciary duty must be pled with particularity. *O'Brien v. Alfonso*, 240 So.3d 471, 478 (Miss. App. 2018) citing *Willbourn v. Stennett, Wilkinson, & Ward*, 687 So.2d 1205, 1216 (Miss. 1996).

26. Plaintiff's mere statement that McRaney and McRaney, PLLC, breached their fiduciary duty is insufficient, and as such this claim fails.

WHEREFORE, Defendant McRaney and McRaney, PLLC requests that the court enter an order dismissing the complaint in its entirety.

DATE: November 9, 2022.

Respectfully submitted,

MCRANEY AND MCRANEY, PLLC

By: /s/ Allison W. Killebrew  
ALLISON W. KILLEBREW

Allison W. Killebrew, MSB No. 102431  
McRaney & McRaney, PLLC  
P.O. Drawer 1397  
Clinton, MS 39060  
Telephone: (601) 953-2814  
Fax: (601) 924-1516  
[allison@mcraneymcraney.com](mailto:allison@mcraneymcraney.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Attorney for Plaintiff  
Samuel L. Begley  
Post Office Box 287  
Jackson, Mississippi 39205  
[begleylaw@gmail.com](mailto:begleylaw@gmail.com)

U.S. Trustee  
United States Trustee  
501 East Court Street  
Suite 6-430  
Jackson, MS 39201  
[USTPRegion05.JA.ECF@usdoj.gov](mailto:USTPRegion05.JA.ECF@usdoj.gov)

This the 9<sup>th</sup> day of November, 2022.

/s/ Allison W. Killebrew  
Allison W. Killebrew